

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

PAULA LOPEZ)	
Claimant)	
VS.)	
)	Docket No. 214,878
CARL'S PLACE)	
Respondent)	
AND)	
)	
KANSAS RESTAURANT ASSOCIATION)	
SELF INSURANCE FUND)	
Insurance Carrier)	

ORDER

The respondent and its insurance carrier requested review of the preliminary hearing Order dated September 17, 1996, entered by Administrative Law Judge John D. Clark.

ISSUES

The Administrative Law Judge granted claimant's preliminary hearing request and ordered the respondent and its insurance carrier to provide claimant medical and temporary total disability benefits. The respondent and its insurance carrier requested review of that order and contend the Appeals Board has jurisdiction to entertain this review because the issue whether claimant proved her entitlement to temporary total disability is a "certain defense" as that term is used in K.S.A. 1995 Supp. 44-534a(a)(2). Although on page 1 of its brief respondent states that it denied compensability of the accident at the preliminary hearing, that issue is not briefed and, therefore, does not appear to be before the Appeals Board at this time. The only issues before the Appeals Board on this review are (1) whether the respondent and its insurance carrier have stated a "certain defense" to permit Appeals Board review and, if so, (2) whether claimant is entitled to temporary total disability benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds as follows:

This review should be dismissed.

The issue of whether claimant has proven she is temporarily and totally disabled is not a "certain defense" as that term is used in K.S.A. 1995 Supp. 44-534a(a)(2). The Appeals Board has previously held and herein reaffirms, that the certain kind of defenses contemplated by that statute are defenses which go to the compensability of the claim. Examples of that type of defense would be allegations of willful failure to use a guard, intoxication, untimely filing of an application for hearing with the director, or whether the respondent maintained a sufficient payroll to come under the provisions of the Workers Compensation Act, in addition to those defenses implicitly within the jurisdictional issues specifically listed in K.S.A. 1995 Supp. 44-534a.

Based upon the above, the Appeals Board finds that respondent and its insurance carrier have not alleged an issue or finding which the Appeals Board may review from preliminary hearing. Therefore, this review should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this review should be, and hereby is, dismissed; that the preliminary hearing Order dated September 17, 1996, entered by Administrative Law Judge John D. Clark remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of November 1996.

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Jeffery R. Brewer, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director